

1 HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PUGET SOUND ELECTRICAL WORKERS
11 HEALTHCARE TRUST,

12 Plaintiff,

13 Case No. 17-975-RAJ

14 v.

15 ORDER

16 STACEY LEMASTER, *et al.*,

17 Defendants.

18 **I. INTRODUCTION**

19 This matter comes before the Court on Plaintiff Puget Sound Electrical Workers
20 Healthcare Trust's ("Puget Sound Healthcare") Motion for Temporary Restraining Order.
21 Dkt. # 2. Puget Sound Healthcare requests that the Court enter a TRO without notice to
22 Defendants Stacey LeMaster, Kim LeMaster, and Christopher Michael Davis, PS. Dkt. #
23 4. For the reasons that follow, the Court **GRANTS** Puget Sound Healthcare's motion.

24 **II. BACKGROUND**

25 The Court describes the facts as Puget Sound Healthcare alleges them in its
26 Verified Complaint. Dkt. # 1. Puget Sound Healthcare is a trust fund created under the
27 Labor Management Relations Act of 1947 that provides and administers healthcare
28 coverage for eligible employees, dependents, and beneficiaries. ¶ 1.1. Stacey and Kim
LeMaster are covered under one of the plans that Puget Sound Healthcare administers.
¶ 3.2. Their child, H.L, is also covered. *Id.* On or about February 19, 2016, H.L.

1 sustained injuries in an accident caused by a third party. ¶ 3.3.

2 The LeMasters' healthcare plan establishes that Puget Sound Healthcare has
3 certain rights of subrogation and reimbursement. ¶ 3.4. The plan provides:

4 If you or your dependent has an injury claim that is payable by a third party
5 or another policy or plan, but can demonstrate that payment from the other
6 party, policy or plan is likely to be delayed for at least 90 days, this Plan
7 will provide benefits if you (or your dependent) agree in writing to
cooperate with this Plan in enforcing its subrogation rights against the other
party, policy or plan.

8 *Id.* To obtain coverage for an accident caused by a third party, a participant must sign a
9 subrogation-reimbursement agreement. ¶ 3.5. On July 8, 2016, Stacey LeMaster signed
10 a subrogation-reimbursement granting Puget Sound Healthcare subrogation rights against
11 the responsible third party, requiring that he submit medical bills and other information,
12 prohibiting him from taking actions that would prejudice Puget Sound Healthcare's
13 subrogation rights, and obligating him to reimburse Puget Sound Healthcare in the event
14 he recovered payment from the third party. *Id.* Puget Sound Healthcare disbursed
15 \$19,738.78 in payments to cover H.L.'s medical treatment for the accident. ¶ 3.6.

16 Since issuing these payments, LeMaster has settled his claims for H.L.'s accident
17 with the responsible third party. ¶ 3.7. LeMaster did so with the assistance of attorney,
18 Defendant Christopher Michael Davis, P.S., who has or will soon obtain control over the
19 settlement proceeds. ¶ 3.9. Davis' paralegal notified Puget Sound Healthcare that the
20 firm has "obtained" the settlement proceeds at issue. ¶ 3.13. The settlement proceeds
21 significantly exceed the amount of payments that Puget Sound Healthcare issued to
22 LeMaster. ¶ 3.7.

23 Puget Sound Healthcare has contacted Davis and asserted its right to be
24 reimbursed for the \$19,738.78 in medical payments. ¶ 3.11. Davis refused to
25 acknowledge Puget Sound Healthcare's claim to the funds and threatened to file a bar
26 complaint and Rule 11 motion in the event that Puget Sound Healthcare seeks relief
27 under ERISA. ¶ 3.12. Davis also indicated that his firm "will be closing our file" on

1 LeMaster's settlement. ¶ 3.10.

2 Now, Puget Sound Healthcare moves for a TRO enjoining Davis from disbursing
3 or dissipating the settlement proceeds obtained in the settlement. Dkt. # 2. It requests
4 that the Court issue a TRO without notice to Defendants because of the risk that notifying
5 them would heighten the risk of losing the settlement proceeds.

6 **III. LEGAL STANDARD**

7 To obtain preliminary injunctive relief, Puget Sound Healthcare must "establish
8 that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in
9 the absence of preliminary relief, that the balance of equities tips in [its] favor, and that
10 an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7,
11 20 (2008). The standard for issuing a TRO is the same. *ProtectMarriage.com - Yes on 8*
12 v. *Courage Campaign*, 680 F. Supp. 2d 1225, 1228 (E.D. Cal. 2010); *Stuhlbarg Int'l*
13 *Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that
14 preliminary injunction and temporary restraining order standards are "substantially
15 identical"). The Ninth Circuit employs a "sliding scale" approach, according to which
16 these elements are balanced, "so that a stronger showing of one element may offset a
17 weaker showing of another." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
18 1131 (9th Cir. 2011).

19 "Motions for temporary restraining orders without notice to and an opportunity to
20 be heard by the adverse party are disfavored and will rarely be granted." Local Rules
21 W.D. Wash. LCR 65(b)(1). The Federal Rules further provide that

22 The Court may issue a temporary restraining order without written or oral
23 notice to the adverse party or its attorney only if: (A) specific facts in an
24 affidavit or a verified complaint clearly show that immediate and
25 irreparable injury, loss, or damage will result to the movant before the
adverse party can be heard in opposition; and (B) the movant's attorney
certifies in writing any efforts made to give notice and the reasons why it
should not be required.

26 Fed. R. Civ. P. 65(b)(1). Unless these requirements are satisfied, "the moving party must
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1 serve all motion papers on the opposing party before or contemporaneously with the
2 filing of the motion and include a certificate of service with the motion.” Local Rules
3 W.D. Wash. LCR 65(b)(1). After the motion is filed, the Court “may consider the motion
4 on the papers or schedule a hearing.” Local Rules W.D. Wash. LCR 65(b)(3).

5 **IV. DISCUSSION**

6 First, Puget Sound Healthcare has shown there is a likelihood of success on the
7 merits. ERISA authorizes Puget Sound to bring an action to redress violations of the plan
8 under 29 U.S.C. § 1132(a)(3). ERISA further “provides for equitable remedies to enforce
9 plan terms.” *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 363 (2006). The
10 Supreme Court has concluded that the relief sought here—in which Puget Sound
11 Healthcare seeks reimbursement from “specifically identifiable funds that [are] in the
12 possession and control of the [Defendants]”—is equitable. *Id.* at 362–63.

13 Second, Puget Sound Healthcare will suffer irreparable injury in the absence of a
14 TRO. If Davis disburses the funds, Puget Sound Healthcare is at risk of losing its
15 remedies under ERISA. *See Bilyeu v. Morgan Stanley Long Term Disability Plan*, 683
16 F.3d 1083, 1092–93 (9th Cir. 2012) (finding that “the reimbursement agreement must
17 ‘specifically identif[y] a particular fund, distinct from the [beneficiary’s] general assets,’
18 from which the fiduciary will be reimbursed. . . [and] the funds specifically identified by
19 the fiduciary must be ‘within the possession and control of the [beneficiary].’”’) (internal
20 citations omitted). Puget Sound Healthcare has also shown there is a risk that notice of
21 this TRO would result in the disbursement of the settlement proceeds. Dkt. # 4.

22 Third, the balance of the equities weighs in favor of granting a TRO. In granting
23 Puget Sound Healthcare’s motion, the Court is maintaining the status quo until a
24 forthcoming preliminary injunction hearing. In light of such a dichotomy—risking the
25 potential disbursement of disputed funds versus maintaining the status quo—the balance
26 of the equities tips in favor of Puget Sound Healthcare.

Finally, granting the TRO advances the public interest. As Puget Sound Healthcare contends, enforcing reimbursement and subrogation provisions are beneficial to ensuring the stability of ERISA plans.

V. CONCLUSION

The Court has reviewed and considered Puget Sound Healthcare's verified complaint, motion, exhibits, supporting certificate, and the applicable law. The Court **GRANTS** Puget Sound Healthcare's Motion for Temporary Restraining Order. Dkt. # 2. The Court issues this TRO **without notice** to Defendants. Defendants are **RESTRAINED** from disposing of or dissipating any portion of the alleged settlement funds until **fourteen (14) days from the date of this Order**, unless otherwise directed by the Court.

Having entered this TRO without notice to Defendants, the Court **ORDERS** Puget Sound Healthcare to immediately serve upon Defendants a copy of the complaint, moving papers, and this Order. **No later than 12:00 p.m. PST on Friday, June 30, 2017**, Puget Sound Healthcare must certify that it has delivered these documents to Defendants.

Defendants may, on or before July 5, 2017, oppose the conversion of this TRO into a preliminary injunction. The Court will not consider a Reply from Puget Sound Healthcare. **The Court sets a preliminary injunction hearing at 10:00 a.m. on Thursday, July 6, 2017.** The Court reserves the matter of whether a bond must be posted until this hearing.

DATED this 28th day of June, 2017.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge